

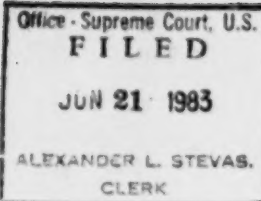
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NOS. 82-2006 and 82-2015



IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

P. TAKIS VELIOTIS, PETITIONER

v.

UNITED STATES OF AMERICA

GEORGE G. DAVIS, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIO-
RARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

PETITIONER P. TAKIS VELIOTIS'
REPLY TO MEMORANDUM FOR THE
UNITED STATES IN OPPOSITION

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The government claims that Veliotis has failed to point to any evidence that (i) a contract not to disclose his testimony existed between General Dynamics and the Trustee; or (ii) that General Dynamics or the Trustee ever asserted the contract as a basis for nondisclosure. The government is wrong.¹

It is clear from the affidavit of General Dynamics' attorney, Christian Hoffman, that the agreement between him and counsel for the Trustee, Steven Schatz, was based both upon what was said at the hearings before Judge Lavien and upon discussions between them held outside of the hearings.

As Mr. Hoffman recounted in his affidavit:

"5. Based on the statements made by counsel at the aforementioned hearings before Judge Lavien, and further based upon my dealings (as counsel for General Dynamics and Messrs. Veliotis, Gilliland, Parsons and Eltzroth) with counsel for the Bankruptcy Trustee, it has always been and continues to be my understanding that the Rule 205 examination

1. Printed copies of this memorandum will follow.

transcripts and exhibits marked in connection with the Trustee's investigation of General Dynamics' dealings with Frigitemp Corporation are confidential and are not subject to disclosure to third parties, including, without limitation, the Acting United States Attorney and the Grand Jury" (Pet. App. A. 43²) (emphasis added)

The government did not submit an affidavit below from Mr. Schatz denying that he and Mr. Hoffman had reached such an agreement or disputing Mr. Hoffman's understanding of it. Moreover, Mr. Schatz participated in these proceedings below and nowhere contradicted Mr. Hoffman's recitation of the facts.

General Dynamics relied upon the contract in opposing the turnover of Mr. Veliotis' transcript. The Trustee complied with the contract by not turning over the transcript.³

The government's position, if adopted, that private parties cannot protect testimony given in a civil case from grand jury subpoena will seriously impair the prompt resolution of civil disputes. See Martindell v. International Tel. & Tel. Corp., 594 F.2d 291 (2d Cir. 1979).

The government's claim that the terms of the contract are not disclosed in detail is also in error (Pet. App. A. 43).

The government's reliance on Garner v. United States, 424 U.S. 648, 655 (1976) is totally misplaced. This case does not involve testimony which was given by a witness pursuant to the compulsory process of the government without assertion by the witness of the privilege. Here, the government was not involved, and Mr. Veliotis testified in a bankruptcy proceeding only after the contract of confidentiality was reached between General Dynamics and the Trustee.

2. "Pet. App." references are to the Appendix of No. 82-2006.

3. Nothing in the transcript of the hearing before Judge Lavien is inconsistent with the contract.

There was no reason for him to assert the privilege. See
Martindell v. International Tel. & Tel. Corp., supra.

It is therefore respectfully submitted that the
petition of P. Takis Veliotis for a writ of certiorari should
be granted.

June, 1983

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